

**THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

JAVIER TORRES,

Plaintiff,

v.

OFFICER TASHA EVANS, Star No. 9411,
in her individual capacity; OFFICER
RAPHIAL LEE, Star No. 17554, in his
individual capacity; UNKNOWN CHICAGO
POLICE OFFICERS, in their individual
capacities; and CITY OF CHICAGO,

Defendants.

No. 08 CV 5122

JUDGE LINDBERG
MAGISTRATE JUDGE NOLAN

FIRST AMENDED COMPLAINT AT LAW

NOW COMES the PLAINTIFF, by and through Horwitz, Richardson, & Baker
LLC, and pursuant to this First Amended Complaint at Law, states the following against
the above named Defendants, to wit OFFICER TASHA EVANS, OFFICER RAPHIAL
LEE, and UNKNOWN CHICAGO POLICE OFFICERS (hereinafter, the "DEFENDANT
OFFICERS"), and the CITY OF CHICAGO.

JURISDICTION

1. The jurisdiction of the court is invoked pursuant to the Civil Rights Act, 42 U.S.C.
§ 1983; the Judicial Code, 28 U.S.C. §1331 and §1343(a); the Constitution of the United
States; and this Court's supplementary jurisdiction powers.

PARTIES

2. PLAINTIFF is a resident of the State of Illinois and a citizen of the United States.
3. The DEFENDANT OFFICERS were at all times relevant hereto employed by and
acting on behalf of the CITY OF CHICAGO.

4. The CITY OF CHICAGO is a duly incorporated municipal corporation and is the employer and principal of the DEFENDANT OFFICERS as well as the other officers and/or employees referred to in this Complaint. At all times material to this Complaint, the DEFENDANT OFFICERS were acting under color of state law, ordinance and/or regulation, statutes, custom and usages of the CITY OF CHICAGO.

FACTS

5. On or about May 3, 2008, PLAINTIFF was arrested at 111 N. State Street, Chicago, Illinois for trespassing. On that date, some or all of the DEFENDANT OFFICERS were engaged in an unreasonable seizure of the PLAINTIFF. Specifically, some or all of the DEFENDANT OFFICERS struck the PLAINTIFF about the body despite the fact that the PLAINTIFF had not resisted arrest, threatened the DEFENDANT OFFICERS, and was not a threat to the DEFENDANT OFFICERS. This conduct violated the Fourth Amendment to the United States Constitution.

6. On or about May 3, 2008, PLAINTIFF did not obstruct justice, resist arrest and/or batter and/or assault any of the DEFENDANT OFFICERS.

7. The show of force initiated by and/or the failure to intervene in the use of said force by the DEFENDANT OFFICERS caused an unreasonable seizure to the PLAINTIFF.

8. As a direct and proximate result of one or more of the aforesaid acts or omissions of the DEFENDANT OFFICERS, PLAINTIFF was caused to suffer damages.

9. On or about May 3, 2008, the DEFENDANT OFFICERS were on duty at all times relevant to this Complaint and were duly appointed police officers for the CITY OF CHICAGO. The DEFENDANT OFFICERS engaged in the conduct complained of, on

said date, within the course and scope of employment and while on duty. This action is being brought with regard to the individual capacity of the DEFENDANT OFFICERS.

10. Upon information and belief, OFFICER TASHA EVANS, on May 3, 2008, came into physical contact with PLAINTIFF.

11. Upon information and belief, OFFICER RAPHIAL LEE, on May 3, 2008, came into physical contact with PLAINTIFF.

12. Upon information and belief, UNKNOWN CHICAGO POLICE OFFICERS, on May 3, 2008, came into physical contact with PLAINTIFF.

CONSPIRACY

13. Some or all of the DEFENDANT OFFICERS conspired to cause damage to PLAINTIFF in the following manner:

- a. using excessive force and/or failing to intervene in the use of excessive force against the PLAINTIFF; and
- b. agreeing not to report each other after witnessing and/or using excessive force relative to the PLAINTIFF.

14. In connection with the above conspiracy, the DEFENDANT OFFICERS specifically engaged in communication on or about May 3, 2008, whereby the DEFENDANT OFFICERS agreed to facilitate, engage in and support the activity which occurred in connection with the allegations immediately above. As a result of this conspiracy, the DEFENDANT OFFICERS by and through their conduct, proximately caused PLAINTIFF to, *inter alia*, suffer physical and emotional injury.

COUNT I **§1983 Excessive Force**

15. PLAINTIFF re-alleges paragraphs 1 – 14 as though fully set forth herein.
16. The actions, and/or the failure to intervene in the actions, of the DEFENDANT OFFICERS amounted to an excessive use of force onto PLAINTIFF. This conduct violates the Fourth Amendment of the United States Constitution.
17. The aforementioned actions of the DEFENDANT OFFICERS were the direct and proximate cause of the constitutional violations set forth above.

WHEREFORE, PLAINTIFF demands compensatory damages from the DEFENDANT OFFICERS. PLAINTIFF also demands punitive damages, costs and attorneys' fees against the DEFENDANT OFFICERS. PLAINTIFF also demands whatever additional relief this Court deems equitable and just.

COUNT II
Battery –State Claim

18. PLAINTIFF re-alleges paragraphs 1 – 14 as though fully set forth herein.
19. The DEFENDANT OFFICERS struck the PLAINTIFF intentionally, without consent or justification.
20. The conduct of the DEFENDANT OFFICERS was in violation of Illinois Law.
21. The aforementioned actions of the DEFENDANT OFFICERS were the direct and proximate cause of the violations set forth above.

WHEREFORE, PLAINTIFF demands compensatory damages from the DEFENDANT OFFICERS. PLAINTIFF also demands punitive damages and costs against the DEFENDANT OFFICERS. PLAINTIFF also demands whatever additional relief this Court deems equitable and just.

COUNT III
§ 1983 Conspiracy Claim

22. PLAINTIFF re-alleges paragraphs 1 – 14 as though fully set forth herein.
23. The aforementioned actions of the DEFENDANT OFFICERS were the direct and proximate cause of the violations of the United States Constitution, *inter alia* the Fourth Amendment and Fourteenth Amendment.

WHEREFORE, PLAINTIFF demands compensatory damages from the DEFENDANT OFFICERS. PLAINTIFF also demands punitive damages, costs and attorneys' fees against the DEFENDANT OFFICERS. PLAINTIFF also demands whatever additional relief this Court deems equitable and just.

COUNT IV
Conspiracy Claim – State Law

24. PLAINTIFF re-alleges paragraphs 1 – 14 as though fully set forth herein.
25. The aforementioned actions were the direct and proximate cause of the violations of the Constitution of the State of Illinois and Illinois law.

WHEREFORE, PLAINTIFF demands compensatory damages from the DEFENDANT OFFICERS. PLAINTIFF also demands punitive damages and costs against the DEFENDANT OFFICERS. PLAINTIFF also demands whatever additional relief this Court deems equitable and just.

COUNT V
745 ILCS 10/9-102 Claim Against the CITY OF CHICAGO

26. PLAINTIFF re-alleges paragraphs 1 – 14 as though fully set forth herein.
27. Defendant CITY OF CHICAGO is the employer of the DEFENDANT OFFICERS alleged above.

28. The DEFENDANT OFFICERS, as alleged above, committed the acts under color of law and in the scope of employment of the CITY OF CHICAGO.

WHEREFORE, should the DEFENDANT OFFICERS be found liable for any of the alleged counts in this cause, PLAINTIFF demands that, pursuant to 745 ILCS 10/9-102, the CITY OF CHICAGO pay PLAINTIFF any judgment obtained against the DEFENDANT OFFICERS as a result of this Complaint.

COUNT VI
Supplementary Claim for *Respondeat Superior*

29. PLAINTIFF re-alleges paragraphs 1 – 14 as though fully set forth herein.
30. The aforesaid acts of the DEFENDANT OFFICERS were within the scope of employment and therefore the Defendant CITY OF CHICAGO, as principal, is liable for the actions of its agents under the doctrine of *respondeat superior*.

WHEREFORE should the DEFENDANT OFFICERS be found liable for any state claims alleged herein, Plaintiff demands judgment against the CITY OF CHICAGO and such other additional relief, as this Court deems equitable and just.

JURY DEMAND

31. Plaintiff demands trial by jury.

Respectfully submitted,

s/ Rachelle Sorg
Attorney for the Plaintiff

HORWITZ, RICHARDSON & BAKER LLC
Two First National Plaza
20 S. Clark St., Suite 500 Chicago, Illinois 60603
Ph (312) 676-2100
Fax (312) 372-7076